

DEPT OF TRANSPORTATION
Docket**RECEIVED**

JUN 23 2009

HEARING DOCKETU.S DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

In the Matter of:

LAKE CHELAN AIR SERVICE, INC.

FAA DOCKET CP *D9NM0007* / *2009-0096*
FAA Case No. 2008NM130023**LAKE CHELAN AIR SERVICE, INC.'S
MOTION FOR DISMISSAL OF
COMPLAINT****INTRODUCTION/RELIEF SOUGHT**

Lake Chelan Air Service Inc. hereby moves for an Order of Dismissal of the Complaint brought by the Federal Aviation Administration. The Complaint alleges that Lake Chelan Air violated the management requirements of 14 CFR 119.69 and 14 CFR 119.71 by using Howard Wellman as Director of Safety/Chief Pilot and Director of Operations without the requisite three year Pilot in Command experience. The Federal Aviation Administration has failed to note in its allegations that deviations from the managerial requirements for Mr. Wellman were reviewed, accepted and approved by the Federal Aviation Administration prior to his assuming the positions. These deviation approvals were granted and incorporated within the approved Operation Specifications of Lake Chelan Air specifically authorizing Howard Brick Wellman to act as both Chief Pilot and Director of Operations at all times pertinent hereto.

In light of the undisputed management experience deviations granted and approved by the FAA to Lake Chelan Air Service, Inc., the filing of the Complaint is not in good faith, is not warranted by existing law or the facts of the case (14 CFR §13.207) and occurred more than two

years before issuance of the Proposed Civil Penalty to respondent (14 CFR §13.208). Therefore, the Complaint should be dismissed.

FACTS

Lake Chelan Air Service, Inc. was, and is, a basic 135 operator flying but a single aircraft from its base of operation in Chelan, Washington. In March, 2006, Lake Chelan Air Service, Inc. requested a deviation from the managerial requirements of 14 CFR 119.69 and .71 to allow Howard "Brick" Wellman to act as Director of Safety/Chief Pilot for Lake Chelan Air. The request for deviation was necessary because Mr. Wellman did not meet the three year Pilot in Command experience requirement for the position of Chief Pilot. After review, Lake Chelan Air Service Inc.'s request for deviation was approved by the Administrator and included within the approved Operating Specifications of Lake Chelan Air on March 16, 2006. A copy of the of the pertinent approval pages from the Lake Chelan Air Service, Inc. Operation Specifications dated March 16, 2006 is attached to the Affidavit of Jeffrey Soehren as Exhibit A.

Under the deviation granted by the FAA, Howard "Brick" Wellman acted as Director of Safety/Chief Pilot for Lake Chelan Air from March 2006 through May 2008 with the knowledge and expressed approval of the FAA.

In February 2008, Lake Chelan Air Service, Inc. requested a further deviation to allow Mr. Wellman to act as Director of Operations in addition to his acting as Director of Safety/Chief Pilot. Following review by the FAA, Lake Chelan Air Service, Inc.'s request for deviation to allow Mr. Wellman to act as Director of Operations in addition to his role as Director of Safety/Chief Pilot was granted and approved and incorporated within the approved Operations Specifications of Lake Chelan Air Service, Inc. A copy of the pertinent pages of the Lake Chelan Air Service, Inc. Operations Specifications approving Mr. Wellman's deviation to act as

both Director of Safety/Chief Pilot and Director of Operations is attached hereto in the Affidavit of Jeffrey Soehren, Exhibit B. The Lake Chelan Air Operations Specifications approved by the FAA specifically note that:

"Conditions and Limitations. Lake Chelan Air Service is authorized to use Howard "Brick" Wellman as both Director of Operations and Chief Pilot."

The Federal Air Regulations specifically allow for deviations from managerial experience requirements under certain circumstances. 14 CFR 119.71 "Management Personnel" includes a process by which a certificate holder may request and be granted deviation from managerial experience requirements.

14 CFR 119.71(f) states in pertinent part that:

"A certificate holder may request a deviation to employ a person who does not meet the appropriate airman experience requirement, managerial requirements, or supervisory experience requirements of this section...grants of deviation under this paragraph may be granted after consideration of the size and scope of the operations and the qualifications of the intended personnel."

It is undisputed that Lake Chelan Air Service, Inc. requested and received deviation from the managerial requirements to enable Howard "Brick" Wellman to act as Director of Safety/Chief Pilot and Director of Operations at all pertinent times hereto.

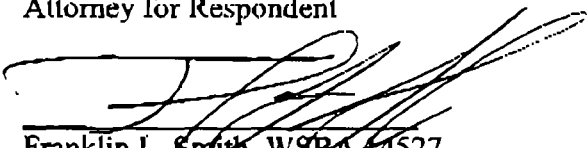
REQUEST FOR DISMISSAL OF COMPLAINT

The FAA has improperly cited Lake Chelan Air Service, Inc. with violations of air regulations which the FAA specifically granted deviations under the provisions of 14 CFR 119.71. Deviation from the managerial requirements was granted and approved by the FAA to allow Mr. Wellman to act as both Director of Safety/Chief Pilot (March 2006; Exhibit A) and further deviation to act as Director of Operations in addition to his duties as Director of Safety/Chief Pilot (March 2008; Exhibit B). Given specific deviation approval, the FAA's

Complaint, which fails to note the undisputed deviation approvals granted, should be dismissed in its entirety. Certainly, to the extent that the Complaint alleges violations in relation to Mr. Wellman's acting as Director Safety/Chief Pilot, these allegations should be dismissed as they arise from conduct which occurred more than two years prior to the issuance of the Proposed Civil Penalty.

Respectfully submitted this 15th day of June, 2009.

Franklin L. Smith
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Certificate of Service

I hereby certify that on this date I have placed in the U.S. mail, postage prepaid, the executed original of LAKE CHELAN AIR SERVICE, INC'S MOTION FOR DISMISSAL OF COMPLAINT, addressed as follows:

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Dated this 5th day of June, 2009.



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